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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)	Case No. CR 18-577 CRB
)	
Plaintiff,)	UNITED STATES' OPPOSITION TO
)	DEFENDANT MICHAEL RICHARD LYNCH'S
v.)	MOTION FOR ADMISSION OF FULL AUDIO
)	RECORDING [ECF NO. 504]
MICHAEL RICHARD LYNCH AND)	
STEPHEN KEITH CHAMBERLAIN,)	Trial Date: March 18, 2024
)	
Defendants.)	

On May 19, 2024, Defendant Lynch filed a "Motion for Admission of Full Audio Recording." ECF No. 504. The defense seeks to admit the entirety of a 58-minute phone call between Joel Scott and Brent Hogenson that was recorded without Mr. Hogenson's consent or knowledge, and which prompted Mr. Scott to question the legality of the recording to Dr. Lynch. The government opposes admission of any portion of the call beyond the 4-minute clip played during Mr. Scott's testimony. The audio recording is hearsay. The defense clearly is offering the remainder of the recording to show the statements made on the call are true and reflect the genuine reasons for Mr. Hogenson's termination. The recording is not a business record and meets no exception to the hearsay rule. It is cumulative and

1 confusing and thus excludable under Federal Rule of Evidence 403. Admission of the recording now –
2 when Mr. Hogenson and Mr. Scott are no longer available to explain their statements, confirm their
3 veracity, or disavow them – may lead to jury to speculate, and deprives the parties of the ability to probe
4 further of the witnesses. The Ninth Circuit has cautioned against simply burdening the jury with
5 voluminous recordings untethered to witness testimony: “Sending [unplayed] tapes to the jury room is
6 akin to allowing a new witness to testify privately, without cross-examination, to the jury during its
7 deliberations.” *See United States v. Noushfar*, 78 F.3d 1442, 1445 (9th Cir. 1996). For these reasons,
8 the Court should deny the motion.

9 DATED: May 27, 2024

Respectfully submitted,

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12 Authority Conferred by 28 U.S.C. § 515

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